IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5279 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINUBHAI RAMANBHAI RATHOD. - Appellant(s)
Versus
CHAUDHARI JESANGBHAI AVCHALBHA & 2 - Defendant(s)

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Appearance :
MR BP MUNSHI for Appellant(s) : 1,
None for Defendant(s) : 1,
MR MP PRAJAPATI for Defendant(s) : 1.2.1,1.2.2
NOTICE SERVED for Defendant(s) : 2,
MR RR MARSHALL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/02/2007

ORAL JUDGMENT

1. The original claimant has approached this Court for seeking enhancement of the compensation awarded by MACT [Main] Kheda at Nadiad in MACP No. 628 of 1986 by

judgment and award dated 12th May, 1995. The appellant has been awarded a sum of Rs.41,100=00 with 12% running interest from the date of the application till realization and proportionate costs and interest against the claim of Rs.75,000=00. In the present appeal, the claim is restricted to Rs.34,000=00.

2. The appellant received injuries in a vehicular accident which took place on 16th March, 1986. On that day at about 9:00 a.m., the appellant was a pillion rider of scooter bearing registration no. GAL 749. It was driven by one Udesinh Budhabhai. They were proceeding from Bhalej side to Anand. When they reached the outskirts of Anand, a fiat car bearing registration no. GUH 9859 which was driven by respondent no. 1 tried to overtake one bus. In the process, the driver lost control over the vehicle and it dashed against the scooter on which the appellant was riding. As a result of the collision, the scooter rider fell down. The appellant suffered serious injuries on both the legs. He was admitted to the hospital of Dr. Sumanbhai Patel as indoor patient. He remained in the hospital from 16th March, 1986 to 20th June, 1986 in the hospital of Dr. Patel. During the hospitalization he was operated upon and also skin grafting was done. He had sustained fracture of tibia and fibula of both the legs.

He, therefore, filed the claim petition for obtaining compensation of Rs.75,000=00. The claim was resisted by respondent no. 3 insurance company by filing written statement at Exh. 15. It denied the averments made in the petition and prayed that the petition of the appellant be dismissed.

3. Before the Tribunal the parties led evidence, oral as well as documentary. On the basis the material produced before it, the Tribunal held that it was respondent no. 1 who was solely responsible for causing the accident. The Tribunal also assessed the compensation at Rs.41,100=00. The appellant being dissatisfied with the quantum of compensation has now filed this appeal.

4. I have heard Mr. B. P. Munshi learned advocate for the appellant and Mr. R.R. Marshall learned advocate for respondent no. 3. Mr. Munshi has submitted that the Tribunal has not assessed the quantum of compensation properly. According to him, the Tribunal ought to have awarded just compensation under the head of pain, shock and suffering, loss of prospective income, sundry expenses, including medical expenditure. As against that Mr. Marshall has supported the judgment of the Tribunal and has submitted that the compensation awarded by the

Tribunal is just and proper and no interference is required by this Court.

5. I have carefully considered the submissions of the learned advocates. I have also closely perused the record and proceedings of the case. So far as the issue of negligence is concerned, it is not challenged by the respondents either by filing substantive appeal or even cross objections. This issue, therefore, stands concluded finally. I have also perused the discussion thereon and I do not see any error having being committed by the Tribunal for holding respondent no. 1 responsible for causing the accident. Hence, the said finding is not required to be disturbed. So far as the quantum is concerned, the Tribunal has awarded Rs.10,000=00 under the head of pain, shock and suffering, Rs.3,200=00 for actual loss of income, Rs.3,000=00 for special diet, Rs.500=00 for vehicle charges. It has also awarded a sum of Rs.10,000=00 for attendance charges, nursing treatment etc., and Rs.14,400=00 for loss of prospective income. The evidence on record shows that the appellant had sustained fracture on both the legs. He was hospitalized for a considerably period. During the period of hospitalization he was operated upon and skin grafting was done. He had to walk with the aid of crutches and he

had to take follow up treatment for long. The effect of the injury is 20% disability. In view of the same, there is no doubt in my mind that the injuries were quite serious in nature. Rs.10,000=00 awarded by the Tribunal on that count is obviously on lower side. The Tribunal ought to have awarded Rs.15,000=00 under the head of pain, shock and suffering. So far as loss of future income is concerned, it may be noted here, that the Tribunal has taken the income of the appellant to be Rs.600=00 per month. On the basis of the same, it has worked out the monthly loss in context with 20% disability, which comes to Rs.120=00 per month and the annual loss to Rs.1,440=00. However, the Tribunal has completely lost the sight of the fact that the appellant was aged 24 years. With the passage of time, he would have earned more and his monthly income would have increased substantially. Applying the formula evolved in the case of **Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1999 (1) GLR p. 388**, the future income of the appellant could be worked out to Rs.900=00 per month. The monthly loss would be therefore, Rs.180=00 and the annual loss would be Rs.2,160=00. The Tribunal has applied the multiplier of 10, which again is on lower side. Considering the age of the appellant it ought to have

been 17 and, therefore, the multiplier is modified to 17. If such multiplier is applied to the annual loss of Rs.2,160=00, the loss of prospective income would be Rs.36,720=00 under the head of medical treatment, special care, attendance charges etc., The Tribunal has awarded only Rs.10,000=00 which is also on lower side and it has to be increased to Rs.15,000=00. Thus, the appellant is entitled to receive Rs.32,320=00 by way of compensation together with interest and costs as per the direction of the Tribunal.

6. In the result, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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